



Amendment No. 2
to
Contract No. MA 7800 NA230000103
for
Fleet Benchmark services
between
Utilimarc, Inc.
and the
City of Austin, Texas

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	To
Vendor Name	Utilimarc, Inc.	Utilimarc, LLC
Vendor Code	V00000949011	V00000949011
FEIN	41-2009837	41-2009837

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the Contract.

Signature & Date:

Mike Nowak


Printed Name: Mike Nowak

Authorized Representative

Utilimarc, LLC
1660 Hwy 100 South, Suite 319
St. Louis Park, MN 55416
jadams@utilimarc.com

Signature & Date:

Adrianna
Broniszewski

 Digitally signed by Adrianna
Broniszewski
Date: 2023.06.14 10:21:12 -05'00' 6/14/23

Didi Broniszewski, Procurement Specialist IV
City of Austin



Amendment No. 1
to
Contract No. MA 7800 NA230000103
for
Fleet Benchmark services
between
Utilimarc, Inc.
and the
City of Austin, Texas

- 1.0 The City hereby amends the above referenced contract to add a tenth-month pilot program to the Scope of Work (SOW) to include Fleet Analytics-Fleet Management Information System and Fleet Analytics-Telematics as described in Attachment 1- Utilimarc Service Offerings Proof of Concept Agreement.
- 2.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

A handwritten signature in cursive script that reads "Dennis Jaconi".

Printed Name: Dennis Jaconi
Authorized Representative

Utilimarc, Inc.
1660 Hwy 100 South, Suite 319
St. Louis Park, MN 55416
jadams@utilimarc.com

Signature & Date:

**Adrianna
Broniszewski**

Digitally signed by
Adrianna Broniszewski
Date: 2023.03.13
08:44:14 -05'00'

3/13/23

Didi Broniszewski, Procurement Specialist IV
City of Austin



**Utilimarc Service Offerings
Proof of Concept Agreement**

This Proof of Concept agreement (“**Agreement**”) is made as of the date of the last signature below, by and between Utilimarc LLC, with offices at 1660 South Highway 100, Suite 319, St. Louis Park, Minnesota 55416 (“**Utilimarc**”), and City of Austin Fleet Mobility Services Department with offices at 6800 Burleson Road, Bldg 214, Suite 165-A (“**Client**”), with respect to the Utilimarc proof of concept service offering specified in Attachment 1 attached to this Agreement (“**Service Offering**”).

1. During the POC Period (as defined in Attachment 1), Utilimarc grants Client, at no cost (except if specified otherwise in Attachment 1), a temporary, non-exclusive, non-transferable, non-assignable right to access and use the Service Offering for Client’s own internal use for the sole purpose of evaluating the Service Offering (“**POC**”). Client may only use the Service Offering during the POC Period. Any extension of the POC Period must be agreed in writing by both parties. Either Utilimarc or Client can terminate the POC Period prior to the scheduled expiration date, by written notice to the other party.

2. Client’s use of the Service Offering during the POC Period is subject to the additional terms set forth on Attachment 1.

3. There is no obligation for Client to purchase the Service Offering at the end of the POC Period. At the end of the POC Period, unless Client and Utilimarc enter into a Master Services Agreements and Statement of Work for the Service Offering, Client will have no further right to use or access the Service Offering and Utilimarc will not be obligated to retain Client’s data or configurations generated during the POC Period by Client’s use of the Service Offering. Utilimarc shall delete Client’s data within 30 days after the POC Period ends. Client acknowledge that Utilimarc may limit certain features and functionality of the Service Offering during the POC Period.

4. Client will retain all right, title and interest to Client’s data sent to Utilimarc or made accessible to Utilimarc under this Agreement for use in the Service Offering and Utilimarc acknowledges this data is Client’s confidential information. Utilimarc will operate the Service Offering during the POC Period with the same duty of care that Utilimarc provides to other users of the Service Offering, but in no event less than a reasonable standard of care. Client and Utilimarc each have an obligation to implement and maintain appropriate technical and organizational security measures with regard to the Service Offering. During the POC Period Utilimarc will provide Client with pre-sales support for the Service Offering to assist Client in the POC.

5. Except for the limited right to use the Service Offering under this Agreement, Client does not acquire any rights, including intellectual property rights, in any component of the Service Offering. During the POC Period, Client must use the Service Offering in compliance with all applicable laws. Utilimarc may terminate this Agreement at any time if Client fails to comply with this Agreement or if Client’s use of the Service Offering poses a security risk to the Service Offering or to other users.

6. UTILIMARC WILL PROVIDE THE SERVICE OFFERING AND OTHER SERVICES HEREUNDER ON AN “AS IS” AND “AS AVAILABLE” BASIS. UTILIMARC MAKES NO WARRANTIES AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. Client’s use of the Service Offering during the POC Period is at Client’s own risk. Utilimarc’s and its suppliers’ aggregate liability for any claim (including indirect damages) arising from Client’s use of the Service Offering during the POC Period will not exceed the greater of \$1,000 USD or the amount paid to Utilimarc for the POC Period.

7. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and replaces and supersedes all prior arrangements or agreements between the parties relating to such subject matter. This Agreement may not be modified except by a writing signed by both parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding its choice of law and conflicts of law rules. For purposes of resolving conflicts related to or arising out of this Agreement, the parties consent to the jurisdiction of and venue in the federal and state courts of the State of Texas,

Attachment 1

located in Travis County, Texas. Client may not transfer or assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Utilimarc. In the event any portion of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and to constitute one and the same instrument. Electronic copies of this Agreement, including without limitation, those transmitted by facsimile, electronic or digital signatures, portable document format (PDF), or scanned to an image file, shall be considered originals.

ACCEPTED AND AGREED:

UTILIMARC, LLC

CLIENT: COA Fleet Mobility Services Department

Dennis Jaconi

Signature
Dennis Jaconi

Name (Printed)
Vice President of Sales

Title
03/10/23

Date

Rick Harland

Signature
Rick Harland

Name (Printed)
Assistant Director FMSD

Title
02/17/2023

Date

Rev. 12/21

Attachment 1 to Utilimarc Service Offerings
Proof of Concept Agreement

Terms applicable to the POC Period for the Service Offering:

1. Service Offering:

Utilimarc software as a service platform application

☒ Benchmarking

☒ Fleet Lifecycle

☒ Fleet Analytics – FMIS

☒ Fleet Analytics - Telematics

Client data stream

☐ Fleet management company

☒ Fleet management system

☒ Telematics

☐ Other _____

Access by

☒ Client provides file to Utilimarc

☐ Client provides API access to Utilimarc

☐ Other _____

2. POC Period: The POC Period begins on the day Client receive login credentials for the Service Offering from Utilimarc and continues for 90 days (“**POC Period**”). At the end of the POC Period, Client’s login credentials will be deactivated and Client will be required to promptly uninstall and delete any software and other components of the Service Offering, and return or destroy any related documentation provided to Client in connection with the POC, retaining none.
3. Transition Period. In the event that Client enters into a Statement of Work with Utilimarc prior to the end of the POC Period to purchase access to the Service Offering, then the POC Period shall automatically be extended for up to an additional 30 days (“**Transition Period**”) to facilitate implementation of the production version of the Service Offering, according to Utilimarc’s instructions and procedures. Client acknowledge that the production version of the Service Offering may not be identical in features or functionality to the version provided to Client during the POC Period.
4. Fees.
- No charge for Client data originating from Verizon, Zonar, Geotab, ARI, Assetworks, Chevin, or IBM Maximo.
 - For Client data originating from other sources, Client shall pay Utilimarc a non-refundable \$_____ implementation fee, which shall be due and payable upon signing of this Agreement.



**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
and
Utilimarc, Inc. ("Contractor")
for
Fleet Benchmark services**

Contract Number: MA 7800 NA230000103

The City accepts the Contractor's Offer for the above requirement and enters into the following Contract. This Contract is between Utilimarc, Inc. having offices at 1660 Hwy 100 South, Suite 319, St. Louis Park, MN 55416 and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Document
- 1.1.2 Terms and Conditions dated 2/22/23.
- 1.1.3 Scope of Work attached as Exhibit A hereto.
- 1.1.4 Contractor's Offer, dated 1/11/2023, incorporated herein and attached as Exhibit B hereto.

1.2 Compensation.

Contractor shall be paid a total Not-to-Exceed amount of \$70,000.

1.3 Term of Contract.

This Contract shall become effective April 12, 2023 and remain in effect for a term of two years or the City terminates the Contract.

1.4 Designation of Key Personnel. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	Name	Phone Number	Email Address
Contractor Contract Manager	Jessica Adams	952-516-7491	jadams@utilimarc.com
City Contract Manager	John Villanueva	O 512-978-1543 M 512-406-1288	John.Villanueva@austintexas.gov
City Project Manager	Matt Sager	O 512-978-2650 M 512-971-5064	Matt.Sager@austintexas.gov

City Contract Administrator, Procurement Specialist	Didi Broniszewski	512-974-9382	Didi.Broniszewski@austintexas.gov
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- 1.5 **Invoices.** The City's preference is to have invoices emailed to coafleetap@austintexas.gov or mailed to the below address:

	City of Austin
Department	Fleet and Mobility Accts Payable
Attn:	Deborah Layne
Address	6800 Burleson Road, Bldg. 312, Suite 165-A
City, State, Zip Code	Austin, TX 78744

For questions regarding your invoice/payment please contact the City Contract Manager.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

By signing below, Contractor hereby certifies the following are true and will ensure the following will remain true throughout the term of this Contract:

1. That its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
2. That it has not in any way directly or indirectly:
 - a. Colluded, conspired, or agreed with any other person, firm, or corporation, as to the amount of this contract or the terms or conditions of this contract.
 - b. paid or agreed to pay any other person, firm, or corporation any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the contract.
3. That it has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Contract documents.
4. In accordance with Chapter 176 of the Texas Local Government Code, that the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;
 - b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and

c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

5. Pursuant to City Council Resolution No. 20191114-056, that its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy. If the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.
6. Pursuant to Texas Government Code §2271.002, the Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
7. Pursuant to Texas Government Code Chapter 2274, the Contractor verifies that if it will have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities as a result of this contract, that it is not owned by or the majority of stock or other ownership interest of the Contractor is not held or controlled by:
- a. individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
 - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
 - c. headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.
8. Pursuant to Texas Government Code Chapter 2274, the Contractor verifies that if it has 10 or more full-time employees, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.
9. Pursuant to Texas Government Code Chapter 2274, the Contractor certifies that, if they have 10 or more full-time employees: (1) they do not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

UTILIMARC, INC.

Tom Nimmo

Printed Name of Authorized Person

[Signature]

Signature

CFD

Title:

2/27/23

Date:

CITY OF AUSTIN

Didi Broniszewski

Printed Name of Authorized Person

Adrianna Broniszewski

Digitally signed by Adrianna Broniszewski
Date: 2023.02.28 09:56:24 -06'00'

Signature

Procurement Specialist IV

Title:

2/28/2023

Date:

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS
MA 7800 NA230000103**

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

1 GENERAL

1.1 TERM OF CONTRACT:

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, unless specified otherwise in the Scope of Work, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

1.2 INDEFINITE QUANTITY:

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

1.3 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. **Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.**
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

1.4 PAYMENT:

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.

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- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. Delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
 - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. Damage to the property of the City or the City's agents, employees or Contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. Reasonable evidence demonstrates that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
 - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of notice of non-appropriation.

1.5 FINAL PAYMENT AND CLOSE OUT:

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

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- B. The making and acceptance of final payment will constitute:
- i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

1.6 SPECIAL TOOLS & TEST EQUIPMENT:

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

1.7 AUDITS AND RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance, including security audits, under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

1.8 FINANCIAL DISCLOSURES AND ASSURANCE:

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

1.9 RIGHT TO ASSURANCE:

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

1.10 STOP WORK NOTICE:

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the

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City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

1.11 DEFAULT:

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

1.12 TERMINATION FOR CAUSE:

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective ten 10 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

1.13 ATTORNEY'S FEES:

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

1.14 TERMINATION WITHOUT CAUSE:

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

1.15 FRAUD:

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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1.16 DELAYS:

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

1.17 FORCE MAJEURE:

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

1.18 INDEMNITY:

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- (1) "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
- (2) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (3) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
 - i. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
 - ii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
 - iii. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
 - iv. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR

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- v. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.
- B. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.
- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
 - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS REASONABLE COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
 - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- D. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- E. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

1.19 NOTICES:

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.20 CONFIDENTIALITY:

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and its licensors. The receiving Party (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of disclosing Party, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential

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Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. The Parties agree: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, and (iii) to promptly notify the disclosing Party of any request for Confidential Information to be disclosed under any law or order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing Party reasonable time to seek an appropriate protective order.
- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. The Parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
- E. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

1.21 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
 - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
 - iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or

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intentionally fails to comply with a requirement of that Subchapter.

1.22 PUBLICATIONS:

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

1.23 ADVERTISING:

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

1.24 NO CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

1.25 GRATUITIES:

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

1.26 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

1.27 INDEPENDENT CONTRACTOR:

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

1.28 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the

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City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

1.29 WAIVER:

The claim or right arising out of a breach of the Contract cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

1.30 MODIFICATIONS:

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

1.31 INTERPRETATION:

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1.32 DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in

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mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

1.33 JURISDICTION AND VENUE:

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

1.34 INVALIDITY:

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

1.35 HOLIDAYS:

Dates for the holidays observed by the City can be found here <https://www.austintexas.gov/department/official-city-holidays>

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.36 SURVIVABILITY OF OBLIGATIONS:

All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

1.37 COOPERATIVE CONTRACT:

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

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1.38 EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.
- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.39 SUBCONTRACTORS:

- A. Work performed for the Contractor by a Subcontractor shall be pursuant to a written Contract between the Contractor and Subcontractor. The terms of the Subcontract may not conflict with the terms of the Contract and shall contain provisions that
 - i. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
 - ii. Prohibit the Subcontractor from further Subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further Subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. Require Subcontractors to submit all Invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its Invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. Require that all Subcontractors obtain and maintain, throughout the term of their Contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- B. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any Contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- C. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 calendar days after receipt of payment from the City.

1.40 INSURANCE:

- A. **GENERAL INSURANCE REQUIREMENTS:**
 - i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract

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execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office

P.O. Box 1088

Austin, Texas 78767

OR

PURInsuranceCompliance@austinTexas.gov

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.

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- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- i. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
- (1) The policy shall contain the following provisions:
- a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
 - b. Independent Contractors coverage (Contractor/Subcontracted work);
 - c. Products/Completed Operations Liability for the duration of the warranty period;
 - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
- (2) The policy shall also include these endorsements in favor of the City of Austin:
- a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- ii. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.
- iii. **Cyber Liability Insurance:** Coverage of not less than \$1,000,000 each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.
- Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

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2 SERVICES

2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

2.2 WORKFORCE:

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
 - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
 - ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

2.3 GUARANTEE – SERVICES:

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from Final Acceptance Date. The maintenance period shall not begin until after the Final Acceptance Date and no associated maintenance fees will be charged until commencement of the maintenance period. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase

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conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

2.4 DATA SECURITY:

The Contractor shall:

- A. Notify the City of a Security Incident as soon as practicable, but no later than 24 hours after the Contractor becomes aware of it; and
- B. Notify the City Identified Contact of any of a Security Incidents by telephone at 512-974-4357 and email at cybersecurity@austintexas.gov and AE-Exec-Info-Sec@austinenergy.com.
- B. All vendors and subcontractors who have access to city data are required to have internal privacy and security policies.
- C. All vendors and subcontractors are required to provide proof of at least annual cybersecurity training for all authorized persons with access to city data.

2.5 TRAVEL EXPENSES:

All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the current United States General Services Administration Domestic Per Diem rates as published and maintained online at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

No amounts in excess of the Travel Policy or rates shall be paid. All Invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

2.6 COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:

The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable Federal, State, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this Paragraph.

2.7 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to all City buildings by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to all City buildings at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.

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- C. Contractor personnel will be required to check in at the security desk when entering or leaving any City building and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

3 DEFINITIONS

- 1. **"Affiliate"** – including but not limited to, (i) Contractor's parent, subsidiaries, sister companies, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.
- 2. **"Amendment"** – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.
- 3. **"Authorized Persons"** – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
- 4. **"Change Order Request"** – the written document provided by the City to Contractor requesting changes to Contractor's obligations under this Contract.
- 5. **"Change Order Response"** – the written document provided to the City by Contractor in response to City's Change Order Request.
- 6. **"City Confidential Information"** – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data, and (f) all other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.

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7. **"City Data"** – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available in connection with this Contract to an Authorized Person.
8. **"City Identified Contact"** – the person or persons designated in writing by the City to receive security incident notifications.
9. **"City"** – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.
10. **"Cloud Service"** – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City's own on-premises servers. In this instance, it would mean such Services provided by the Contractor.
11. **"Confidential Information"** – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; **"City Confidential Information"** is a subsets of Confidential Information.
12. **"Contract"** – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.
13. **"Contract Price"** – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.
14. **"Contractor"** – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
15. **"Contractor Information"** – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.
16. **"Contractor Software"** – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.
17. **"Data Breach"** – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City's or City's customers' unencrypted Personally Identifiable Information or City Confidential Information.
18. **"Documentation"** – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the

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Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.

19. **“Facility”** – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.
20. **“FACTA”** – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.
21. **“Final Acceptance Date”** – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.
22. **“IaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the IaaS services.
23. **“Infrastructure-as-a-Service” (IaaS)** – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).
24. **“Non-Public Data”** – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.
25. **“Public Data”** means data typically created for public release or released to the public through management decision and/or a public information request.
26. **“Restricted Data”** means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.
27. **“Non-Subscription Services”** – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.
28. **“PaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.
29. **“Party” or “Parties”** – the City and Contractor, individually or together, as applicable.
30. **“Personally Identifiable Information”** – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal

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data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).

31. **“Platform-as-a-Service” (PaaS)** – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.
32. **“Purchase Order”** – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.
33. **“SaaS Software Application” and “SaaS Software”** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
34. **“SaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the SaaS Software Application.
35. **“Security Incident”** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.
36. **“Service Level Agreement” (SLA)** – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
37. **“Service Levels”** – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.

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- 38. **"Services"** – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.
- 39. **"Software"** – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.
- 40. **"Software-as-a-Service" (SaaS)** – the Services provided to the City to use the Contractor's offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- 41. **"Specifications"** – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.
- 42. **"Statement/Scope of Work"** – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City's Service needs and expectations.
- 43. **"Subscription Services"** – City's access to and use of and Contractor's provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.
- 44. **"Third Party"** – any natural person or legal entity other than Contractor and City.
- 45. **"Transition Date"** – the date upon which it is established to City's satisfaction that the SaaS Software Application is stable enough to support City's production processing.
- 46. **"User Information"** – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor's supervision or control.
- 47. **"User"** – City's employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.
- 48. **"Work Product"** – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or

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any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor's Software.

Statement of Work for City of Austin

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Executive Summary

At Utilimarc, we work closely with our customers to ensure their data is accurate, analyzed and delivered to create real change within their fleet. Our 20 years of industry experience working with diverse silos of data from the nation's largest utility fleets has driven our development of a business intelligence (BI) platform that connects and unifies fleet data sources into a single environment, and is then expressed through our Fleet Analytics applications.

An important layer to Utilimarc's BI platform - and its success - is our people. Our team of data scientists and fleet analysts will integrate your data sources - cleaning, configuring, and unifying your data into our applications - as well as working with you to establish actionable KPIs, metrics and reporting. To ensure you have the best experience with Utilimarc, our Customer Success team will work alongside your fleet to ensure it is getting the most value from our products and services.

We are all greatly looking forward to partnering with you and helping to optimize all areas of your fleet.

Sincerely,

Chris Shaffer

CEO

Statement of Work

Description of Services for Benchmarking

Provide two years of access to the **Utilimarc's Benchmarking product**, a comprehensive online collection of interactive reports focused on fleet operations, performance measures, trends, and peer comparisons. Additionally, Client will receive access to our Fleet Lifecycle and Staffing Analysis.

With the **Benchmarking application**, we will provide Client the following services:

- Collect, process and load data into Utilimarc's platform. Data sets include:
 - 2 calendar years of historic ownership, maintenance, utilization and descriptive information on Customer's vehicles, equipment, and trailers.
 - 2 calendar years of financial summary data on fleet department's total expenses.
 - 2 calendar years of job statistics, including job description, hire date, leave date, salary and more.

Benchmarking offers the following views into your organization's fleet, staffing, and financial data:

- **Fleet Benchmarking Overview:** Summarizes your most important metrics on a single page. Easily review key metrics and trends over time. View your cost per unit performance in key class codes, against your peers, and over time. Study macro-level vehicle and staffing metrics and five-year trends at the industry level and by vehicle weight.

Comparisons:

- **Asset Age:** Delivers information about the average age of your fleet (or a specific vehicle class code, make or model) and makes comparisons to your Benchmarking peers.
- **Corporate KPIs:** Shares service-level performance statistics (e.g., cost per retail customer, cost per line mile) for your organization and compares your numbers to your Benchmarking peers. This report is designed for utility clients.
- **Cost Per Asset:** Provides cost analysis and peer comparisons by vehicle class code, make and model distributed by units, miles, gallons, vehicle equivalency, PTO hours or engine hours. Also includes a wide variety of metrics, trends, and comparisons in fleet inventory, vehicle specifications, and maintenance over a three-year period.
- **Purchase Prices:** Offers cost and specification analysis by class, make and model for your fleet assets and makes comparisons to your peers. Review specification details by vehicle make, model, drive type, body type, and fuel type.
- **Staffing:** Shares metrics, trends, and ratios broken out by number of units per employee and number of VEs per employee and compares your results to your Benchmarking peers. Includes breakdowns by job class.

- **Technician Performance:** Analyzes billed hours charged to an asset performed by internal technicians and hourly wage and total compensation information and trends for employees designated as a technician within your organization as well as comparing your organization's numbers to Benchmarking peers. Includes position counts broken down by your organizational hierarchy.

Trends:

- **Financials:** Displays historical expense totals, breakouts, and trends for your organization.
- **Industry Asset Trends:** Displays seven years of vehicle-related metrics for Benchmarking Participants allowing you to analyze changes and movement in the industry.
- **Industry Technician Performance Trends:** Reviews seven years of staffing-related metrics for Benchmarking Participants allowing you to analyze changes and movement in the industry for more than 20 key categories.
- **Inventory:** Provides a comparison of fleet count and cost measures for your entire organization or a component of it based on filter options. Includes comparisons to peers. Includes counts and trends by class code and a unit-level inventory of fleet assets.
- **Maintenance Cost:** Details your cost for maintaining fleet assets based on age based on cost per unit, mile and gallon and other associated metrics by vehicle age as well as against Benchmarking peers

Exceptions:

- **Labor Hours:** Identifies vehicles with a higher or lower annual labor hours than what is normal for your fleet in that class code. Make comparisons across multiple class codes.
- **Low-Utilized Vehicles:** Illustrates which vehicles have a lower utilization (and higher utilization) than what is normal for your fleet in a specific class code. Make comparisons across multiple class codes to find both the highest- and lowest-utilized vehicles within your entire fleet. Also offers underutilized counts and percentages by vehicle age.
- **Maintenance Cost:** Pinpoints vehicles with higher or lower maintenance costs than what is normal for your fleet in that class code. Make expense comparisons across multiple class codes.
- **Purchase Prices:** Identifies vehicles with a higher or lower purchase prices than what is normal for your fleet within a specific class code.
- **Total Cost:** Displays vehicles with higher or lower total costs than what is normal for your fleet in a specific class code. Make expense comparisons across multiple class codes.
- **Work Order Counts:** Singles out vehicles with a higher or lower work order count than what is normal for your fleet in a specific class code.
- As well as provide Client with up to 5 hours of Analyst time to update summary report or other ad hoc requests.

With the **Fleet Lifecycle Analysis** we will provide Client with the following services:

- Collect, process and load data into Utilimarc's BI platform. Data sets include (in addition to those above):
 - 12 months of vehicle auction information, or suitable estimates.

- 12 months of future vehicle acquisition costs, or suitable estimates.
- Create models to identify what lifecycle provides the lowest total cost of ownership over the life of each asset. The model will be based on Utilimarc's Class Codes, subject to data availability, and will include the following inputs:
 - Purchase Price (calculated from acquisition data).
 - Market Depreciation Rate (calculated from auction data).
 - Inflation Rate
 - Annual Mileage (calculated from historic data).
- Create a replacement schedule based on current inventory and chosen lifecycles.
- Create a summary report which will include optimum lifecycles for each class, a description of report methodology, maintenance regressions for each class, TCO tables for each class, forecasted staffing levels based on replacements in next 12 months and other statistical information.
- Provide up to 10 hours of Analyst time to update models and reports based on changes in lifecycle, inventory or other inputs.
- Additional modeling and scenario development will require a separate Statement of Work.

Utilimarc will provide the above services according to the Service Level Agreement and Support Policy, which is attached hereto as Schedule A.

Benchmark Participation. Utilimarc may include Client's benchmarking information as part of Utilimarc's benchmarking reports or modules, current and future, for other clients in accordance with the terms of the Agreement. Utilimarc may exclude Client or any other party from a comparison group for any reason, in its sole and absolute discretion.

Phases of Implementation

Phase One: Data Integration and Processing	Phase Two: Data Review and Training	Phase Three: Final Report and Presentation	Phase Four: Continued Support
Collect and load data into Utilimarc's data lake and applications. Data quality where applicable.	Utilimarc Customer Success and Analytics teams provide review of benchmarking results and training for end- users.	Utilimarc Analytics teams provide formal presentation of benchmarking results to stakeholders.	Utilimarc Customer Success and Analytics team provides continued support for ad hoc requests.

Phase One: Data Collection

During this phase Utilimarc's analysts collaborate with Client to collect required data from maintenance, financial and human resource systems. This data is loaded into Utilimarc's data warehouse for cleansing, validation, and configuration.

Phase Two: Data Review and Training

During this phase initial results of Benchmark and Lifecycle applications are reviewed with Client. The following tasks may be delivered during this phase:

Application Setup:

- Quality assurance and live testing within applications

User Management and Entitlements:

- Establish user entitlements
- Construct user hierarchies and permissions per Client's information

Product Training:

- User administration and account settings: Customer Success
- Application training: Analytics team

Onboarding Documents:

- Client is provided access to Utilimarc's Knowledge Center and Customer Support portal
- Client is provided user guides for Benchmarking reports.

Phase Three: Final Report and Presentation

During this phase Utilimarc's analysts provide executive summary and formal presentation to stakeholders, including analysis of Client performance against peers and recommendations for areas of improvement. Virtual or onsite presentation is available on Client request.

Phase Four: Continued Support

During this final phase Utilimarc's analysts provide additional support based on Client requests. This could include updates to executive summary, additional presentations, and/or ad hoc data requests.

Client Responsibilities

- Provide at least one technical contact with administration responsibilities and appropriate API and database access to provide required data to Utilimarc
- Provide at least one business contact to interface with Analytics team through Application setup
- Provide required data set as outlined in Description of Service
- Meet with the Analytics team to discuss questions and concerns regarding data provided.

Utilimarc Roles and Responsibilities

Throughout the scope of work our teams will be working on the front and back ends during implementation and deployment. Below are the roles and responsibilities of our internal teams.

Utilimarc Roles	Customer Success Manager	Project Manager & Engineers	Data Analysts
Responsibilities	Main point of contact for all phases of scope and ongoing support	FMIS data to data lake integration team.	Platform and application configurations and user entitlement setup team.

Implementation Timeline

Benchmark data sets for the previous calendar year are made available between March and April of the following calendar year, which allows time to collect enough data sets to make useful comparisons among the participants. Except between January 1 and April 30, Phase 2 will begin no later than 4 weeks after the required data sets are provided by the Client. Executive summaries in Phase 3 are created when 80% of participants have reported, typically between June and July, but are available earlier at Client's request.

Lifecycle can begin as early as the completion of Phase Three of Benchmark. Draft reports will be completed no later than 4 weeks after the required data sets are provided by Client.

Schedule A

Service Level Agreement and Support Policy

1 Overview

This Service Level Agreement (SLA) describes the level of service to be provided in the delivery of Utilimarc's software platform ("Platform") services purchased under the SOW to which this document is attached. It also provides Utilimarc's technical support service delivery parameters.

2 Uptime Commitment

Utilimarc will provide access to the Platform on a twenty-four hour, seven days a week (24x7) basis at least 99% of each calendar month, subject to the exclusions listed below.

The Platform uptime metric shall not apply to performance issues caused by the following:

- Overall Internet congestion, slowdown, or unavailability;
- Unavailability of generic Internet services (e.g. DNS servers) due to virus or hacker attacks;
- Force majeure events as described in the terms of the Master Services Agreement;
- Actions or inactions of Client (unless undertaken at the express direction of Utilimarc) or third parties beyond the control of Utilimarc;
- A result of Client equipment or third-party computer hardware, software, or network infrastructure not within the sole control of Utilimarc; or
- Scheduled Platform maintenance (updates, maintenance and patches). Utilimarc shall use commercially reasonable efforts to schedule maintenance downtime for the period between the hours of Tuesday 8:00 PM to Wednesday 6:00 AM (U.S. Central Time).

3 Support

Utilimarc will provide the following support to Client:

- Monday – Friday 8:00am – 5:00pm (Central Time) email support at support@utilimarc.com and telephonic support at 1-866-278-6170, both for technical support as well as Defect correction as described below.
- For Priority One Defect [Urgent] Defects only, email support twenty-four (24) hours a day, seven (7) days a week at support@utilimarc.com for Defect correction as described below.

4 Support Requests and Defect Resolution

Definitions.

- a) "Defect" means a Priority One Defect, a Priority Two Defect or a Priority Three Defect as defined below.

- b) “Priority One Defect” [Urgent] means a failure of the Platform to comply with the applicable specifications and documentation that, in the reasonable judgment of Client, renders the Platform inoperable or causes a material adverse impact to Client’s business operations.
- c) “Priority Two Defect” [High Priority] means a failure of the Platform to comply with the applicable specifications and documentation in a manner which materially impairs the performance of one or more functions of the Platform, or requires that Client use the Platform in a restricted manner.
- d) “Priority Three Defect” [Regular Priority] means a failure of the Platform to comply with the applicable specifications and documentation that has minimal impact on Client’s day-to-day operations but the performance or efficiency of Client’s business operations would improve if such non-compliance were corrected.
- e) “Defect Notice” means Client’s telephonic, electronic or other written notice of a Defect submitted to Utilimarc, or Utilimarc’s detection of such Defect, whichever is earlier.

Each reported Defect will be classified by Client as a Priority One Defect, Priority Two Defect or Priority Three Defect. Utilimarc will respond to Client’s request for support as set forth below:

1 Priority One Defect [Urgent]. Utilimarc will initiate diagnostic and remedial measures within one (1) hour of receipt of a Priority One Defect Notice. Utilimarc will work continuously and diligently twenty-four (24) hours a day, seven (7) days a week to provide a work around that is reasonably acceptable to Client.

2 Priority Two Defect [High Priority]. Utilimarc will initiate diagnostic and remedial measures no later than within one (1) hour of receipt of a Priority Two Defect Notice. Utilimarc will use reasonable and continuous efforts to identify solutions to the Defect during normal business hours, and if a work around is provided that is reasonably satisfactory to Client, Utilimarc will provide a fix to the Priority Two Defect no later than fifteen (15) days after the date of the Defect Notice.

3 Priority Three Defect [Regular Priority]. Utilimarc will respond to Priority Three Defects within four (4) business hours of receipt of a Defect Notice. Utilimarc will fix Priority Three Defects within a reasonable timeframe commensurate with the issues but no later than sixty (60) days after the date of the Defect Notice.

5 Recovery Times

In the event of a critical server failure, Utilimarc will respond to Client within an hour of the failure and work to resolve the issue within 24 hours whenever possible.

Utilimarc’s committed Recovery Objectives are as follows:

RPO (Recovery Point Objective) - 30 Minutes

RT0 (Recovery Time Objective) - 4 Hours

EXHIBIT B

Utilimarc, Inc.
1660 Hwy 100 South, Suite 319
St Louis Park, MN 55416 US
952.417.0189
accountspayable@utilimarc.com



ADDRESS
City of Austin
Finance & Admin Services
Department
FLEET ADMINISTRATION
1190 Hargrove
Austin, TX 78702 USA

Estimate 1029

DATE 01/11/2023

EXPIRATION DATE 01/31/2023

ACTIVITY	QTY	RATE	AMOUNT
Benchmarking Plan 2023 fleet benchmark study, including the benchmarking application and the lifecycle application (garage-level staffing)	1	35,000.00	35,000.00
Benchmarking Plan 2024 fleet benchmark study, including the benchmarking application and the lifecycle application (garage-level staffing)	1	35,000.00	35,000.00T
Quote for 2023 and 2024 Benchmarking study and Staffing analysis	SUBTOTAL		70,000.00
	TAX		0.00
	TOTAL		\$70,000.00

Accepted By

Accepted Date